

Serial: 202779

IN THE SUPREME COURT OF MISSISSIPPI

No. 2015-CA-01161

LATARRIA HATCHER

Appellant

v.

***2625 BELVEDERE DRIVE HOLDING ,
LLC D/B/A BELVEDERE APARTMENTS
AND MARINDA FRAN LOCKE***

Appellees

EN BANC ORDER

The instant matter is before the Court on the Court's own motion. Also before the Court is Appellant's Motion to Consolidate, asking the Court to consolidate the above-styled matter with five related appeals. Further, before the Court are Appellant's Motion to Correct Record, Second Motion to Correct Record, Third Motion to Correct Record, and Motion for Reconsideration.

On October 29, 2015, a panel issued a show-cause notice, asking the Appellant to show cause as to: whether the appeal should be converted to a motion under Mississippi Rule of Appellate Procedure 48B. Appellant responded and claims that the matter should continue as a direct appeal under Mississippi Rule of Appellate Procedure 4.

After due consideration, the Court finds that the matter fails as a Rule 4 appeal for lack of an appealable judgment. Although the Notice of Appeal cites Rule 48B, the Court further finds that the matter fails to comply with the requirements of Rule 48B. *See* M.R.A.P. 48B ("A true copy of any order entered by the subject judge on the question of

recusal and transcript of any hearing thereon shall be submitted with the petition in the Supreme Court.”). Therefore, the Court finds that the matter should be dismissed.

IT IS THEREFORE ORDERED that Appellant’s Motion to Consolidate, Motion to Correct Record, Second Motion to Correct Record, Third Motion to Correct Record, and Motion for Reconsideration are hereby dismissed as moot.

IT IS FURTHER ORDERED that the instant appeal is dismissed. All costs, not previously assessed, shall be taxed to Appellant.

SO ORDERED, this the 18 day of March, 2016.

/s/ Josiah D. Coleman

JOSIAH D. COLEMAN, JUSTICE

TO DISMISS: DICKINSON AND RANDOLPH, P.JJ., LAMAR, COLEMAN, MAXWELL AND BEAM, JJ.

KITCHENS, J., OBJECTS WITH SEPARATE WRITTEN STATEMENT JOINED BY KING, J.

NOT PARTICIPATING: WALLER, C.J.

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KITCHENS, J., OBJECTING TO THE ORDER WITH SEPARATE WRITTEN STATEMENT:

¶1. I respectfully disagree with the order of dismissal. Latarrria Hatcher filed a document titled “Notice of Appeal Pursuant to M.R.A.P. 4(d) and 48B” seeking appellate review of a circuit court judge’s denial of her motion to recuse. Because no final, appealable judgment was entered in the case, a direct appeal was not available as a mechanism for appellate review of the denial of the motion to recuse. However, Mississippi Rule of Appellate Procedure 48B, which Hatcher cited in her filing, provides such a mechanism. Rule 48B provides, in pertinent part, that:

If a judge of the circuit, chancery, or county court shall deny a motion seeking the trial judge’s recusal, or if within 30 days following the filing of the motion for recusal the judge has not ruled, the filing party may within 14 days following the judge’s ruling, or 14 days following the expiration of the 30 days allowed for ruling, seek review of the judge’s action by the Supreme Court. A true copy of any order entered by the subject judge on the question of recusal and transcript of any hearing thereon shall be submitted with the petition in the Supreme Court.

M.R.A.P. 48B.

¶2. The Court orders this matter dismissed because Hatcher has failed to comply with Rule 48B. I would deem Hatcher’s filing a petition under Rule 48B. Hatcher filed the “Notice of Appeal Pursuant to M.R.A.P. 4(d) and 48B” within the fourteen days required for Rule 48B review. M.R.A.P. 48B. Also within the fourteen days, Hatcher separately filed a copy of the trial judge’s order denying recusal. Rule 48B requires that the party seeking review of a motion to recuse file with the petition the “transcript of any hearing” that occurred on the motion to recuse. The circuit court entered an order, which has been filed in this case, that states that no transcript exists because no hearing occurred.

¶3. Although Hatcher’s filing was styled “Notice of Appeal,” and she did not attach the trial judge’s order to the filing, the filing was timely, it invoked Rule 48B, and Hatcher filed the trial court’s order within the fourteen-day deadline. Therefore, this Court has before it everything required by Rule 48B for review of the denial of the motion to recuse. M.R.A.P. 48B. For these reasons, I would find that Hatcher “perfected this [petition for Rule 48B review] through imperfect process.” *Keyes v. State*, 708 So. 2d 540, 542 (Miss. 1998). I would suspend the requirements of Rule 48B and review the trial judge’s denial of the motion to recuse. M.R.A.P. 2(c). I would deny Hatcher’s motion to consolidate this matter with five related requests for review of orders denying motions to recuse because those requests were filed outside the fourteen-day deadline. M.R.A.P. 48B.

KING, J., JOINS THIS SEPARATE WRITTEN STATEMENT.